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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 12th April 2012

No. 2905-li/1-(D)-21/2005-(Pt)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th January 2012 in Industrial Dispute Case No. 2 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Cuttack Municipal Corporation, Cuttack and its workman Shri Suresh Kumar Nayak, ex Electrician was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 2 OF 2011

Dated the 17th January 2012

Present :

Shri Raghbir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Chief Executive Officer, . . . First Party—Management
Cuttack Municipal Corporation,
Cuttack.

And

Shri Suresh Kumar Nayak, . . . Second Party—Workman
S/o Late Hadibandhu Nayak,
At Saffiput,
P.O. Paramhansa,
Via Biribati,
P.S. Cuttack Sadar,
Dist. Cuttack.

Appearances :

Shri Surendra Ku. Das,
Authorised Representative.

. . . For First Party —Management

Shri Suresh Kumar Nayak

. . . For Second Party —Workman himself

AWARD

The Government of Odisha in the Labour & Employment Department, in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), for short, the Act, have referred the following dispute for adjudication vide their Order No.1015—li/1(B)-21/2005-LE., dated the 27th January 2011.

“Whether the termination of services of Shri Suresh Kumar Nayak, ex Electrician with effect from the 1st August 1999 by the management of Cuttack Municipal Corporation, Cuttack is legal and/or justified ? If not, to what relief Shri Nayak is entitled ?”

2. In his claim statement the second party workman has asserted that he has worked as an Electrician (skilled workman) in the establishment of the first party e.i., Cuttack Municipal Corporation, Cuttack for the period from 1-4-1997 to 31-7-1997 and that on 1-8-1999 the first party refused employment to him without compliance of Section 25-F, 25-G and 25-H of the Act. He has further asserted that all the employees who were appointed along with him are still continuing in their employment under the first party. He has referred to letter No. 36051, dated the 15th December 2000 of the Government of Odisha, Housing & Urban Development Department wherein there was a direction to disengage all D.L.Rs./N.M.Rs. engaged after 19-5-1997. In this regard it is the stand of the workman that since he was engaged on 1-4-1997, i.e. prior to 19-5-1997, the instructions contained in the letter is not an impediment for his reinstatement. Further case of the second party is that ever since his retrenchment he has been going without any gainful employment. With these assertions he asks for his reinstatement with full back wages.

3. The first party-management on being served with notice to file written statement appeared before this Tribunal and repeatedly took to file written statement. At last the petition for time filed by it on 7-10-2011 was rejected by this Tribunal and the first party was set *ex parte*.

4. The second party-workman has examined himself as W.W. No.1.

5. In his affidavit evidence the second party has reiterated the facts stated in his claim statement. He has stated that during the period from 1-4-1997 to 31-7-1999 he was under the employment of the first party without any break and thereby he has completed one year of continuous service. He has further stated that on 1-8-1999 when he reported for duty the management refused him employment. In support of his contention he has exhibited a series of Pay-Cards which are marked Ext.1 series. He has also exhibited one Experience Certificate purportedly issued by the-then Assistant Engineer (Electrical), Cuttack Municipal Corporation certifying that the second party had

been working in the Electrical Section of the Corporation since 1-4-1997 till the date of issue of the certificate, i.e. 5-7-1999. Ext.1 series reflect that the workman has received wages for his engagement under the Corporation during the period 6/97 to 1/99. There is nothing to disbelieve the pay cards (Ext.1 series). On the basis of the particulars reflected in the Pay -Cards it can be said that the workman has completed one year of continuous service under the first party before his services were terminated. As there is no material showing that the termination of service of the second party was brought about in accordance with the mandatory provisions of the Act, this Tribunal is of the considered view that the retrenchment of the second party is illegal.

6. The second party's services was terminated with effect from the 1st August 1999. The copy of the conciliation failure report reflects that the workman raised the dispute by filing a complaint before the labour machinery on 4-8-2003. Thus, there was a delay of about four years to raise the dispute. The workman has not shown as to why there was a long delay. The workman was under the employment of the first party for a period of about two years. Since the date of his termination the workman has not rendered any service to the first party. However, he has taken a plea that his co-worker namely, Sudhakar Mohanty, whose service was illegally terminated by the first party has been reinstated in service by the management on the strength of an Award passed by the Presiding Officer, Labour Court, Bhubaneswar in I.D. case No. 70 of 2004. The second party claims to be an Electrical Technician. It cannot be believed that an Electrician would sit idle without any gainful employment. Considering all these facts and circumstances, this Tribunal passes an Award in favour of the second party for his reinstatement in service with 25% back wages from the date he raised the dispute,, i.e. 4-8-2003 till the Award becomes enforceable and thereafter he shall be entitled to full back wages till the date of his actual reinstatement.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
17-1-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
17-1-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

T. K. PANDA
Under-Secretary to Government